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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/072,088	02/08/2002	Yona Eckstein	200ES344	9442

7590 03/26/2003

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Legal Department
9911 Brecksville Road
Cleveland, OH 44141-2147

EXAMINER

SANDERS, KRIELLION ANTIONETTE

ART UNIT	PAPER NUMBER
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1714

DATE MAILED: 03/26/2003

5

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/072,088

Applicant(s)

ECKSTEIN ET AL.

Examiner

Kriellion A. Sanders

Art Unit

1714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-55 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-55 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) ____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 12-26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 12, It is unclear as to what total weight percentages the so stated partial weight percentages are based upon.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-29 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over EP Patent No. 0 389 768.

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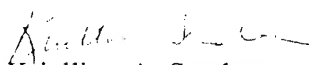
The EP Patent discloses polyurethane polymers and polyurethane based polymers which may contain melamine cyanurate as a sole organic flame retardant and which additionally contain inorganic flame retarding agents. The melamine cyanurate is incorporated into the composition at an amount of 1-40% by weight. See claim 11. Because the components of the patented invention are essentially the same as those of applicant's invention, the claimed compositions are thought to have essentially the same properties. No patentable difference is readily ascertainable between patented and present inventions. Selection of any known polyurethane based polymer, including combinations thereof, would have been obvious to one of ordinary skill in the art absent a clear showing of unexpected results attributable to such a variation. Likewise, processing the compositions in extruders with plural heating zones to formulate wire and cable covering material would have also been obvious to one of ordinary skill in the art absent a clear showing of unexpected results absent a clear showing of unexpected results attributable thereto. This technology is known to the art.

Blount discloses a flame retardant composition comprising thermoplastic resins which may include polyphenylene ether, styrenic resins and polycarbonates, a nitrogenous salt of a polyphosphorous oxyacid wherein the nitrogen reactant may be melamine, a carbonizing metal-containing compound which may be ferrocene and various auxiliaries and additives. It is clear from the disclosed reactants for the nitrogenous polyphosphorous oxyacid salt, that melamine phosphate is a clear variation contemplated within the realms of the disclosure. See Examples 8 and 9. Because all necessary components for formulating melamine phosphate are set forth in the disclosure

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of the invention, formulation and subsequent use of such in the invention would have been an obvious variation to one of ordinary skill in this art at the time of applicant's invention. Also see the descriptions for components 1, 2, 3 and 4 in the disclosure.

Any inquiry concerning this communication should be directed to Kriellion A. Sanders at telephone number 703-308-2435.


Kriellion A. Sanders
Primary Examiner
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